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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,725	12/04/2003	John Paul Weirich		4004

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JOHN WEIRICH
524 KENDALL #3
PALO ALTO, CA 94306

EXAMINER

KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/729,725

Applicant(s)

WEIRICH, JOHN PAUL

Examiner

Matthew J. Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

In response to the amendment filed on October 26, 2006, the current rejections of the claims *stand*. The following new and reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-28 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0085994 to Fujita et al. in view of U.S. Patent No. 5,688,555 to Starr.

In regards to claims 21-25 and 27-28, Fujita et al. disclose a capsule imaging system comprising: imaging means for imaging at least a portion of a gastro-intestinal digestive tract in a subject by emitting and receiving a plurality of electromagnetic signals above three gigahertz (see paragraphs 0051-52, 0063 and 0098), a communications means for communication with at least one antenna outside of the GI digestive tract of the subject including at least one radio transmitter (see paragraph 0122); a controlling circuit to control a plurality of communication operations by the radio transmitter, and to control at least one operation of the imaging means (see Figs. 3-6); a capsule to enclose the imaging means, communications means and the controlling circuit (see Fig. 2); and a power supply 21 inside the capsule to supply electrical power

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to the communication means and the imaging means (see paragraph 0052). Fujita et al. are silent with respect to the imaging means including an ultra-wideband sensor system at frequencies in the radio wave spectrum substantially between 3.1 and 10.6 gigahertz. Starr teaches of an analogous imaging system and apparatus which implements ultra-wideband radar motion sensors to provide three-dimensional images in real-time. Furthermore, Starr discloses an object of the invention is to provide an imaging system for use in the biological sciences (see Cols. 1-2). It would have been obvious to one skilled in the art at the time the invention was to use an ultra-wideband imager in the apparatus of Fujita et al. to provide an alternate imaging means capable of producing an image having accurate three-dimensional structure localization with minimal distortion as taught by Starr.

In regards to claim 26, Fujita et al. disclose a capsule imaging system, wherein the communications transmitter unit operates in conjunction with a wearable vest-style garment for the subject having the GI digestive tract to wear as the capsule travels in the GI digestive tract, wherein the wearable vest-style garment includes at least one communication signal receiving antenna 4 to receive a plurality of radio wave signals from the communications transmitter unit (see Fig. 1a).

Response to Arguments

Applicant's arguments filed October 26, 2006 have been fully considered but they are not persuasive.

Applicant's arguments with regards to the patentability of the Fujita et al. application are moot, as they do not pertain to the instant application. Applicant should

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discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Starr teaches of an analogous imaging system and apparatus which implements ultra-wideband radar motion sensors to provide three-dimensional images in real-time. Furthermore, motivation to combine the apparatuses of Fujita et al. and Starr is provided by the fact that Fujita et al. teaches the desirability of using various and alternate imaging means in the endoscopic capsule, and Starr teaches an object of the invention is to provide an imaging system for use in the biological sciences. Furthermore, Starr teaches of an analogous imaging system and apparatus which implements ultra-wideband radar motion sensors to provide three-dimensional images in real-time. It would have been obvious to one skilled in the art at the time the invention was to use an ultra-wideband imager in the apparatus of Fujita et al. to provide an alternate imaging means capable of producing an image having accurate three-dimensional structure localization with minimal distortion as taught by Starr. Thus, as broadly as claimed, the combination of Fujita et al. and Starr meet the limitations of the recited claims.

Applicants states that Fujita et al.'s patent application 2003/0085994 was not published until May 8, 2003 and thus is not prior art. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. Thus the rejection is valid.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

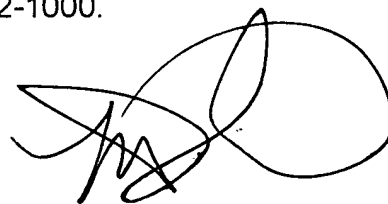
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *MJK*

12/28/06



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SUPERVISORY PATENT EXAMINER
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